STATEMENT OF

RONALD R. AUMENT

DEPUTY UNDER SECRETARY FOR BENEFITS

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

HOUSE COMMITTEE ON VETERANS' AFFAIRS

APRIL 17, 2007

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on the four bills under consideration today.

H.R. 67

H.R. 67, the "Veterans Outreach Improvement Act of 2007," would require the Secretary to establish, maintain, and review procedures for ensuring the effective coordination of outreach activities within the Department of Veterans Affairs (VA). It would also authorize VA to make grants to state veterans agencies for the purposes of carrying out, coordinating, and improving outreach and assistance in the development and submittal of benefit claims. In addition, states could use grant funds to educate and train state and local government employees who provide veterans outreach services in order for those employees to gain accreditation. H.R. 67 would also authorize VA to enter cooperative

agreements and arrangements with state veterans agencies to carry out, coordinate, or improve outreach by VA and the states. Finally, this bill would require a separate appropriations account for VA's outreach activities and would authorize the appropriation of $25 million for each of the fiscal years 2007, 2008, and 2009 to carry out the outreach activities mandated and authorized by this bill.

Although VA supports the goal of improving outreach, we believe that, in light of the legislative changes made by Congress last year and recent VA-initiated changes in outreach coordination, Congress should allow VA to implement and assess these changes before taking additional measures.

First, VA believes the provision mandating procedures to ensure the effective coordination of VA outreach activities is unnecessary because VA is already taking steps to improve outreach coordination. For example, in August of 2005, Secretary Nicholson established the Office of National Outreach Programs (Office), which is charged with working with VA's administrations and staff offices to coordinate and monitor major VA outreach efforts to ensure veterans and their families have timely access to information regarding VA benefits and services. The Office is also responsible for developing and implementing administrative and operational policies related to outreach.

The Office coordinates with VA's senior leaders and the communications offices in the Veterans Health Administration (VHA), Veterans Benefits

Administration (VBA), and National Cemetery Administration (NCA) to develop national, regional, and local outreach plans to inform specific veteran populations, their families, and service providers of VA benefits and services.

Additionally, on March 6, 2007, President Bush issued an Executive Order establishing the President's Commission on Care for America's Returning Wounded Warriors (Commission). One of the four missions of the Commission is to "analyze the effectiveness of existing outreach to service members regarding such benefits and services, and service members' level of awareness of and ability to access these benefits and services, and [to] identify ways to reduce barriers to and gaps in these benefits and services[.]" We expect the Commission's findings to be useful in helping us to identify and address gaps in our outreach activities.

We believe H.R. 67's requirement that VA annually review procedures for ensuring effective coordination of outreach is unnecessary because 38 U.S.C. §§ 6302 and 6308, which were added to title 38, United States Code, just last year, require VA to establish a biennial outreach plan and report to Congress on the implementation of the plan, including recommendations to improve outreach. The first outreach plan is due on October 1, 2007, and our first report is due to Congress no later than December 1, 2008. In addition, section 805 of Public Law 108-454 requires VA to conduct a survey and report to Congress on service members', veterans', family members', and survivors' awareness of the benefits

and services provided by VA; the findings of the survey will be submitted to Congress in 2010. In view of the plans and reports currently required by law, the imposition of additional requirements is unnecessary.

Second, H.R. 67's requirement to condition grants to state veterans agencies on provision of assistance to programs in locations with large or growing veteran populations would not provide VA sufficient flexibility to reach other deserving veteran populations, such as rural or smaller communities. Furthermore, we are not convinced that this program would be the most efficient use of the $25 million per year the bill would authorize. If Congress decides to provide money to perform outreach to veterans, it should also give VA the flexibility to reach out to all veterans, not just those in large or growing veteran communities.

If funds are appropriated as authorized, enactment of H.R. 67 would cost $75 million over fiscal years 2007-2009. We estimate administrative costs involving two additional full-time employees at the GS11/12/13 level and $250,000 per year for travel, materials, training, etc., to administer the grants program.

H.R. 1435

H.R. 1435, the "Department of Veterans Affairs Claims Backlog Reduction Act of 2007," would require VA to conduct in California, Florida, Ohio, South

Carolina, and Texas a three-year pilot program whereby claims identified by VA as needing further development would be referred to a County Veterans Service Officer (CVSO) for further development and transmitted back to VA in ready-to-rate condition. This bill would also permit benefit claims to be submitted to CVSOs under the pilot program and require such claims to be treated as if received by VA. In authorizing a CVSO to develop a referred claim, the bill would require the CVSO to advocate for the claimant and "work through and in cooperation with" any veterans service organization appointed as the claimant's representative. Under the pilot program, CVSOs would have full access to veterans' information in VA's Benefits Delivery Network as well all appropriate electronic files concerning the claimant whose claim has been referred to development. Finally, this bill would require VA to report to Congress the effect the pilot program had on reducing the claims backlog and would authorize to be appropriated for each participating state such funds as may be necessary to carry out the pilot program.

Although reducing the backlog of pending claims is one of VA's highest priorities, VA opposes enactment of H.R. 1435 for several reasons.

First, under current law, accredited representatives of organizations recognized by VA, including CVSOs, may prepare and prosecute benefit claims. In fact, developing evidence to the point that claims are ready to be rated by VA is already one of the main responsibilities of these claim representatives.

Therefore, in this respect, this bill would result in Federal funds going to just one category of representatives for performing responsibilities they already have.

Second, VA is concerned that the pilot program may potentially adversely affect VBA's adjudication workload. Currently, nearly 20 percent of VBA's adjudication workload is from the five states chosen in the bill to participate in the pilot program. If unforeseen problems arise during the course of the pilot program, claim processing could be disrupted.

Third, to the extent this provision is intended to facilitate claim filing, VA has already created a faster, safer, and more efficient means. Today, a claimant can file a claim for benefits electronically over the Internet. This service allows a claimant to file from any Internet-enabled computer, creating greater access and eliminating the need to personally appear at a VA office or mail a claim. However, claimants who choose not to use this service still have the option of filing a claim in person at a local regional office or mailing the claim directly to VA, thus eliminating the need to file it with a CVSO.

Fourth, CVSOs are funded by state or local tax revenues to benefit local veterans on behalf of the state or local taxpayers. This bill would authorize Congress to appropriate funds to support CVSOs involved in the pilot program. We believe that any additional funds for claim processing should be to support

VA staff who are not only accountable to VA, but who also serve all veterans, not just those living in areas that provide CVSO representation.

Fifth, VA is concerned that the bill may conflict with representation agreements entered into between claimants and their duly appointed claim representatives, including attorneys, agents, or Veterans Service Organization representatives. The bill appears to undercut the role of a claim representative appointed by the claimant because it would, in effect, create a dual system of representation by making the CVSO the claimant's advocate. Dual representation would create confusion and would be inefficient because representatives chosen by claimants and CVSOs developing claims under this bill would likely duplicate efforts. VA may be required to send additional notice letters, thereby reducing efficiency, and VA would nonetheless be required to fulfill its notice and claim development obligations under current law.

Finally, this bill's authorization of appropriations concerns us for two reasons. First, the bill is unclear how the costs of the pilot program are to be determined. For example, do the costs include the salaries and benefits provided to CVSOs? Do they include overhead such as rent and office supplies? If that is the case, then the bill would effectively shift a cost currently funded by state and local tax revenues to the Federal government. Additionally, we are not sure of whether state and local computer systems are able to support the information-technology security programs mandated for VA computers, the costs

associated with bringing them into compliance, and who would be responsible for such costs.

More importantly, however, this bill mandates the pilot program be carried out in six states but only *authorizes* appropriations. If additional appropriations are not made to fund the pilot program, then, presumably, resources must be taken from VBA's General Operating Expense appropriation. If that were to occur, VBA would be forced to reallocate resources to pay for the pilot program. VBA would have to either take funds from allocations for states not participating in the pilot program and reallocate them to cover the cost of the pilot program in participating states or reduce funding to VBA activities in the participating states and reallocate them to CVSOs participating in the pilot program. The former alternative would be unfair to veterans not living in a participating state, and the latter would hurt the timeliness of adjudication of claims in the participating states because fewer VBA personnel would be available to rate claims.

VA estimates that it would cost $69 million to conduct the three-year pilot program created by H.R. 1435.

H.R. 1444

H.R. 1444 would require VA to pay an interim benefit in the amount of $500 per month if a claim for benefits has been remanded by the U.S. Court of Appeals for Veterans Claims or the Board of Veterans' Appeals in "a case"

involving a claim for disability compensation, pension, or dependency and indemnity compensation, and VA does not decide "the matter" within 180 days of the date of the remand. It would require VA to pay $500 per month to "each claimant under the claim" until "the matter" is finally decided. When a claim for which interim benefits are being paid is finally decided, amounts paid as interim benefits are to be considered an advance payment of benefits owed for any period before the date of the final decision if the claim is granted. In no case are amounts paid as interim benefits to be considered an overpayment. H.R. 1444 would also require VA to report to Congress, not later than six months after the date of enactment, on measures VA intends to take to expedite the processing of remanded benefit claims.

VA opposes this bill for several reasons. First, it would create an incentive to submit claims of dubious merit, obtain a remand, and extend the claim-development process by piecemeal submission of information and evidence and multiple requests for extension of deadlines, for as long as possible in order to maximize the amount of interim benefits payable. A claimant's cooperation with VA can reduce the time it takes to resolve a remanded claim. Inversely, a claimant's lack of cooperation can delay the resolution of a claim. The law requires many procedural steps in developing and deciding claims and often provides substantial minimum periods in which claimants are required to respond to requests for information or evidence. There are also generous provisions for requesting extensions of deadlines. H.R. 1444's requirement that VA pay interim

benefits and permission for claimants to keep them regardless of whether they are ultimately found to be entitled to the amounts already paid or entitled to benefits at all would create a strong financial inducement to making the development time last as long as possible.

By allowing claimants to retain interim benefits that would not have been paid but for this provision, this bill would in effect punish taxpayers for untimely decisions. Further, it is unlikely to improve adjudication timeliness because it does nothing to alleviate the causes of adjudication delay. We believe the President's budget provides VA the necessary resources to achieve VA's production goals.

Finally, the interim benefit of $500 is approximately the amount paid to a single veteran with a service-connected disability rated at 40 percent (currently $501 per month). However, in fiscal year 2005, nearly 60 percent of all veterans receiving disability compensation had a combined rating of 30 percent or less. Given that two-thirds of remanded claims are eventually denied and that nearly 60 percent of claimants entitled to disability compensation receive between $115 and $348 per month, the interim benefit rate of $500 per month is artificially high and would likely unjustly enrich many disability compensation claimants.

VA estimates that enactment of H.R. 1444 would result in a cost of $46.2 million during the first year, $112.9 million for five years, and $180.1 million over ten years.

H.R. 1490

H.R. 1490 would require VA to presume that a claimant presenting a claim for benefits with respect to service-connected disability or death has presented a valid claim of "service-connectedness" provided that the claimant supports the claim with proof of service "in a conflict" and a description of the nature (including the connection to such service) of the disability or claim. VA would not have to presume the validity of the claim if VA determines there is positive evidence to the contrary. H.R. 1490 would also require VA, immediately upon processing the claim, to award benefits at a "median level" for the type of disability described in the claim until the appropriate level of benefits is determined. The bill would also require VA to audit a percentage of claims to uncover and deter fraud. These provisions would apply to claims "presented" on or after the date of enactment and to claims still pending or not fully adjudicated as of the date of enactment. Finally, the bill would require VA to redeploy claim-processing personnel who are no longer needed to evaluate service-connection claims to Vet Centers or other locations for the purpose of assisting veterans apply for benefits related to service-connected disabilities.

VA opposes H.R. 1490. Under current law, a claimant has the responsibility to present and support a claim for benefits. The basic elements necessary to establish a claim for service-connected disability compensation are: (1) the existence of a present disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship between the present disability and the disease or injury incurred or aggravated during service. H.R. 1490 appears to require VA to presume that all elements of the claim have been established based on the assertions of the claimant; thus, the only thing for VA to determine is the appropriate level of benefits. It is not clear whether VA would be expected, or permitted, to conduct any development to determine whether there is positive evidence to overcome the presumption.

While VA supports getting benefits into the hands of deserving claimants as soon as possible, VA opposes H.R. 1490 for several reasons. First, VA is concerned that a presumption of service connection creates an incentive to file invalid claims, especially when benefits would be paid without appropriate claim development. If the intent is for VA to presume any current disability is service connected based on the veteran's statement without any supporting documentation or verification, then the system would be ripe for fraud and abuse. If VA audited as many as 25 percent of claims to determine whether the claimed disability is in fact service connected, an unscrupulous claimant would still have excellent odds of obtaining and retaining benefits based on an invalid claim.

Second, by making immediate payments upon processing of a claim, VA may in many cases pay benefits to claimants whose claims would not be granted if fully developed and, in many other cases, may pay benefits at a rate ultimately determined not to be warranted. Furthermore, this bill gives no guidance as to whether Congress intends for an overpayment to be assessed and recouped from a claimant if the true benefit rate proves to be less than the median level of payments made. Failure to asses and recoup overpayments would increase the incentive to file a marginal or invalid claim. On the other hand, frequent creation of overpayments and a resulting need to collect them would divert VA resources from other claim-adjudication activities.

Third, one of the predicates to the presumption of service connection under this bill would be proof of "service in a conflict." The meaning of this term, which is not defined in the bill or in title 38, United States Code, is uncertain. For example, it is unclear whether it is intended to refer to service in combat, service in wartime, or service in a theater of operations. The meaning of the term would affect the scope of the presumption of validity.

Fourth, this bill would have major, apparently unintended, consequences for the veterans health-care system. Any veteran whose disability compensation claim is presumed valid and who is awarded a median rating under this provision would be eligible for VA health care. In fact, VHA estimates that 3.2 million new Priority 8 veterans who are not currently eligible to enroll would become eligible

for VA health care. Of further concern is the effect on such a veteran if he or she is later determined not to be entitled to disability compensation. Such a veteran would then have to be disenrolled from care. Apart from the potential disruption of care, it is unclear whether a veteran would be financially liable for medical care received while entitled to compensation based on the presumption if the veteran is later found not to be entitled to compensation. In addition, subject to the existence of an employment handicap, veterans awarded compensation under the provisions of this bill may become eligible for vocational rehabilitation and employment benefits.

Fifth, to the extent the bill is intended to simplify the adjudication process and free up resources, we question whether any reduction in claim-processing staff would be realized. Even if all elements of the claim are presumed to be met based on the veteran's statements, a likely significant increase in the total number of claims received and the burden of dealing with audited claims would likely consume any savings from not fully developing claims.

Furthermore, even if savings in claim processing were to occur, VA is concerned with the bill's apparent contemplation that claim-processing personnel be redeployed to Vet Centers. The Vet Center program has a specific and unique function to provide outreach and adjustment counseling to war veterans and to assist them in a successful social and psychological readjustment to civilian life. Furthermore, Vet Centers currently provide veterans with information

about VA benefits and refer them to VA benefits counselors or veterans' service officers for assistance with benefit claims. We are concerned that placing claim-processing personnel in Vet Centers would not be consistent with the goals and functions of the Vet Centers.

Assuming that all original and reopened compensation claims projected in the FY 2008 President's Budget submission are granted under the presumption for service connection, obligations may increase by as much as $173 billion over ten years. This projection applies the average payment projections included in the budget model and does not include an expected increase in the number of claims received or an increase in the number of issues filed per claim. The mandatory costs do not include anticipated increases for the Vocational Rehabilitation and Employment account. With the increase in compensation beneficiaries, the number of veterans rated 20 percent or more would increase. These veterans would become eligible for Vocational Rehabilitation and Employment benefits resulting in increased mandatory spending. As mentioned earlier, this bill would apply only to veterans with "proof of service in a conflict referred to in such claim." If this term is further defined, it may result in a decrease in the overall mandatory costs.

This concludes my statement, Mr. Chairman. I would be happy to entertain any questions you or the other members of the Subcommittee may have.